

**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 239B.4(6), the Department of Human Services amends Chapter 41, “Granting Assistance,” Chapter 46, “Overpayment Recovery,” and Chapter 60, “Refugee Cash Assistance,” Iowa Administrative Code.

These amendments limit the types of businesses at which the electronic access card (EAC) can be used. Recipient households will not be allowed to use their EACs to access benefits at any of the following prohibited locations: a liquor store, a casino, a gambling casino, a gaming establishment, or a retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment. A recipient that is proved to have used the recipient’s EAC at one of the above locations is considered to have committed a fraudulent act, must repay the amount accessed at the location, and is subject to a household ineligibility period.

These amendments also remove an obsolete reference to intentional program violations.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 1001C** on September 4, 2013.

The Department received comments from one respondent on these amendments. The respondent’s first comment was a concern that a penalty could follow both parents if the parents separate during an ineligibility period (paragraph 41.25(11)“c”). This provision is especially harsh, considering that there must be a finding by the Department of Inspections and Appeals (DIA) that a “recipient” has used the EBT at a prohibited location. The penalty should be attached to that recipient. If that recipient leaves the household, then the penalty should not be imposed on the remaining members of the household. Neither the federal law nor the Iowa Code requires that both parents be penalized if they separate. In fact, Iowa Code sections 239B.14(1)(b) and (2) both refer to individuals accessing benefits and individuals being liable. The respondent requested that the Department remove that portion of the proposed regulation that imposes the penalty on both parents of a two-parent household when they separate.

The Department’s response is that only one EAC is issued to a household. The EAC is issued to the person chosen by the family to be the head of household (case name). In a two-parent household, both adults can use the EAC. Since both parents in a two-parent family use the same card, there is no systematic way to identify which parent used the card. DIA will be able to subpoena EAC transaction records to verify that the EAC was used at a prohibited location. However, those records will not indicate which parent in a two-parent household made the transaction. In some instances, but not all, DIA will be able to identify through video surveillance from the location, a statement from the individual, or other means which parent used the EAC at a prohibited location.

As a result of this comment by the respondent, the Department revised paragraph 41.25(11)“c” to account for instances in which DIA has identified the parent who used the EAC at a prohibited location. The proposed language in 41.25(11)“c” relating to the application of the ineligibility period when parents from a two-parent household separate has been revised and reorganized as paragraph 41.25(11)“d” and now reads as follows:

“d. When parents from a two-parent family separate during an ineligibility period, if:

“(1) The department of inspections and appeals investigation identifies the recipient who used the electronic access card at a prohibited location, the ineligibility period will follow that recipient.

“(2) The department of inspections and appeals investigation does not identify the recipient who used the electronic access card at a prohibited location, the ineligibility period will follow the recipient who is the case name when the violation occurred.”

The respondent’s second comment was that the proposed amendments did not include any action to be taken by the Department, such as providing information to Family Investment Program (FIP) recipients about the new regulations or posting signs at the businesses where FIP recipients are forbidden from using their EAC cards. The respondent requested that the Department propose regulations that will

address the need to inform FIP recipients about the restrictions found in Iowa Code sections 239B.5(4) and 239B.14(1)(b).

The Department's response is that the Department's implementation plan includes informing recipients of the new eligibility requirement and the consequences for failing to comply. The Department will send all FIP recipients an informational letter and issue a press release in January 2014. The Department will also be adding information regarding this requirement to the application, review form, brochures, Notices of Decision, and the card carrier to which the EAC is attached when the card is issued. The Department did not make any revisions to the Notice of Intended Action with regard to the respondent's second comment.

The Council on Human Services adopted these amendments on November 13, 2013.

These amendments do not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 239B.4(6).

These amendments will become effective February 1, 2014.

The following amendments are adopted.

ITEM 1. Adopt the following new subrule 41.25(11):

**41.25(11)** *Access to benefits.*

a. A recipient shall not use the recipient's electronic access card issued pursuant to 441—subrule 45.21(1) to access benefits at any of the following prohibited locations as defined by federal statute or regulation applicable to this prohibition:

- (1) A liquor store,
- (2) A casino, gambling casino or gaming establishment, or
- (3) A retail establishment that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment.

b. When the department receives a detailed complaint or suspects that a recipient has used the recipient's electronic access card at a prohibited location, the case shall be referred to the department of inspections and appeals for further investigation.

c. When the department of inspections and appeals finds that a recipient has used the recipient's electronic access card at a prohibited location, the household that includes the recipient is:

- (1) Considered to have committed a fraudulent act;
- (2) Liable for any amounts accessed at a prohibited location and required to repay such amount in accordance with 441—Chapter 46;
- (3) Ineligible for FIP for a three-month period after the first report by the department of inspections and appeals which includes a finding of misuse;
- (4) Ineligible for FIP for a six-month period after each subsequent report by the department of inspections and appeals which includes a finding of misuse.

d. When parents from a two-parent family separate during an ineligibility period, if:

- (1) The department of inspections and appeals investigation identifies the recipient who used the electronic access card at a prohibited location, the ineligibility period will follow that recipient.
- (2) The department of inspections and appeals investigation does not identify the recipient who used the electronic access card at a prohibited location, the ineligibility period will follow the recipient who is the case name when the violation occurred.

ITEM 2. Amend rule **441—46.21(239B)**, definitions of "Client error" and "Overpayment," as follows:

"*Client error*" means and may result from:

1. False or misleading statements, oral or written, regarding the client's income, resources, or other circumstances which may affect eligibility or the amount of assistance received;
2. Failure to timely report changes in income, resources, or other circumstances as required by rule 441—40.27(239B); or

3. Failure to refund to the child support recovery unit any nonexempt payment from the absent parent received after the date the decision on eligibility was made; or

4. Access of benefits issued via the electronic access card at a prohibited location pursuant to 441—subrule 41.25(11).

*“Overpayment”* means any assistance payment received in an amount greater than the amount the eligible group is entitled to receive or the amount of any payment accessed at a prohibited location pursuant to 441—subrule 41.25(11).

ITEM 3. Amend subrule 46.24(3) as follows:

**46.24(3) Client error.**

a. An overpayment due to client error shall be computed as if the information had been reported and acted upon timely.

b. Overpayments due to failure to refund payments received from the absent parent shall be the total nonexempt support payment made for members of the eligible group at the time the support payment was received. In addition, assistance payments made to meet the needs of the eligible group may also be subject to recoupment under provisions in 441—subrule 41.22(6).

c. An overpayment due to a recipient’s accessing benefits via the electronic access card at a prohibited location shall be the total of the transactions at prohibited locations pursuant to 441—subrule 41.25(11).

ITEM 4. Adopt the following **new** subrule 60.10(4):

**60.10(4)** Restrictions found in 441—subrule 41.25(11) apply to benefits issued under this chapter.

ITEM 5. Amend rule 441—60.16(217) as follows:

**441—60.16(217) Overpayment recovery.** Recovery of overpayments ~~and intentional program violation~~ shall be determined as defined in 441—Chapter 46, Division II, except that refugee cash assistance shall be substituted for the family investment program whenever it appears.

[Filed 11/13/13, effective 2/1/14]

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 12/11/13.